

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Robert A. Smith,

Case No. 2:23-cv-01030-RFB-BNW

Plaintiff,

ORDER

V.

Centurion Medical, et al.,

Defendants.

10 The Court screened Plaintiff's first amended complaint, deferred the matter of the filing
11 fee, and allowed Plaintiff to proceed with certain Eighth Amendment claims for deliberate
12 indifference to serious medical needs and First Amendment claims for retaliation. (ECF No. 19.)
13 The Court also referred this case to the Inmate Early Mediation program, and a mediation
14 conference is scheduled to take place at **1:00 p.m. on August 8, 2025, via video conference.** (ECF
15 No. 22.) Pending before the Court is Plaintiff's motion for appointment of counsel (ECF No. 20)
16 and "emergency motion notice to Court." (ECF No. 23.)

17 In the motion for appointment of counsel, Plaintiff asks the Court to appoint him counsel
18 because he has cataracts, and his eyesight has deteriorated to the point that he cannot read. (ECF
19 No. 20 at 3.) In the “emergency motion,” Plaintiff again asks the Court to appoint counsel based
20 on his poor eyesight. (ECF No. 23 at 3–4.) Plaintiff also asks that the mediation take place by video
21 conference, be conducted verbally, and be recorded. (*Id.*)

22 A litigant does not have a constitutional right to appointed counsel in a civil case. *Storseth*
23 *v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The statute that governs this type of litigation,
24 28 U.S.C. § 1915(e)(1), provides that “[t]he court may request an attorney to represent any person
25 unable to afford counsel.” However, the Court will appoint counsel for indigent civil litigants only
26 in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). “When
27 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of
28 success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light

1 of the complexity of the legal issues involved." *Id.* (quoting *Weygandt v. Look*, 718 F.2d 952, 954
2 (9th Cir. 1983)). "Neither of these considerations is dispositive and instead must be viewed
3 together." *Id.* (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

4 The Court does not find that appointment of counsel is warranted at this time. Based on
5 Plaintiff's most recent filing (ECF No. 22), which he prepared himself, it appears that Plaintiff can
6 articulate his case to the extent necessary to make a good faith effort to participate in the mediation
7 conference. The mediation will be held by video conference, and during the mediation, the
8 mediator will meet separately with each party to verbally discuss the case and settlement offers.
9 As a result, counsel is not necessary for Plaintiff to participate in the mediation and determine if
10 he can reach a settlement.

11 The Court therefore denies Plaintiff's motion for appointment of counsel and emergency
12 motion without prejudice. If the parties do not settle by the conclusion of the mediation conference,
13 then Plaintiff may file a renewed motion for appointment of counsel, and the Court will consider
14 it in due course. If Plaintiff files renewed motion for appointment of counsel, he should clearly
15 explain how the current status of his vision impacts his ability to prosecute this action himself.

16 IT IS THEREFORE ORDERED that Plaintiff's motion for appointment of counsel (ECF
17 No. 20) and emergency motion (ECF No. 23) are DENIED without prejudice.

18 IT IS FURTHER ORDERED that the mediation remains set for **1:00 p.m. on August 8,**
19 **2025, via video conference.**

20 IT IS FURTHER ORDERED that the Clerk of Court is kindly requested to send Plaintiff
21 a courtesy copy of the order setting the mediation conference, which includes information to assist
22 Plaintiff in preparing for mediation. (ECF No. 22.)

23 DATED: July 15, 2025.

24
25 
26 Brenda Weksler
27 United States Magistrate Judge
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